

STATE OF MICHIGAN
COURT OF APPEALS

KRISTEN SMITH, next friend of A.S., minor,

Plaintiff-Appellant,

UNPUBLISHED
December 15, 2015

v

BRONSON LIFESTYLE IMPROVEMENT AND
RESEARCH CENTER CO, a/k/a BRONSON
ATHLETIC CLUB, MEDSPORT ENTERPRISE,
INC, a/k/a MEDSPORT ATHLETIC CLUBS,
LLC, and SHERRY GESMUNDO, next friend of
ALLEN DUEWEKE, minor,

No. 321813
Kalamazoo Circuit Court
LC No. 2013-000234-NO

Defendants-Appellees.

Before: MARKEY, P.J., and MURPHY and STEPHENS, JJ.

STEPHENS, J. (*concurring*).

I agree with the majority conclusion to affirm and its analysis that defendants cannot be held vicariously liable for Dueweke's intentional torts when Dueweke's criminal conduct was not foreseeable, as defined in *Hamed v Wayne Co*, 490 Mich 1, 12; 803 NW2d 237 (2011). I write separately because I believe that the Bronson Athletic Club (BAC) summer kids' camp program fell within the purview of the Child Care Organizations Act, MCL 722.111*et seq.*, as a child caring institution.

Under MCL 722.111(b),

"Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution, owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for developmentally disabled or emotionally disturbed minor children. Child caring institution does not include a hospital,

nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

The BAC program, while not a 24-hour operation, serves the purpose and operates in the manner described in the statute. The BAC's program was advertised as a five-day summer program for children aged 6-12. It operated from 9 a.m. to 3 p.m. with before and after care options. The program also operated during the school year for days when school was not in session. The program was open to both BAC members and to the general public. Parents who availed themselves of the program were not required to be onsite when their children were in the program.

Despite the guise of its program name as a "camp," the evidence indicates that the BAC operated an all-year round childcare institution and as such, was subject to licensing rules and regulations appurtenant to childcare institutions.

It is for these reasons that I respectfully concur.

/s/ Cynthia Diane Stephens